



**DECISION AND STATEMENT OF REASONS OF PETRA HENNIG MCFATRIDGE LEGAL
MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED POWERS OF THE CHAMBER
PRESIDENT**

Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules
of Procedure 2017 ("the Procedural Rules")

in connection with

Case reference FTS/HPC/EV/23/3579

Parties

Ms Dianne Stewart (Applicant)

Mr John Cowie (Respondent)

Change Mental Health (Applicant's Representative)

3 Jura Street, Perth, PH1 3AR (House)

1. On 9.10.2023 the First Tier Tribunal for Scotland Housing and Property Chamber (FTT) received the application, which was made under rule 109 of the Procedure Rules and stated as the grounds applicable grounds 1, 1A, 11, 12, 12A, 13, 14 and 15. The application.
2. Appended to the application was a letter dated 20.2.23 from Mental Health & Money Advice to Perth and Kinross Council with an enclosure of a document headed Notice to Leave dated 15.8.2022 mentioning grounds 1 and 11, but not presented in the

format of a Notice to Leave as prescribed by The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 as amended. The notice was a simple letter stating if the tenant does not leave by The application was also accompanied by 11.9.2022 an application for eviction would be made on the grounds 1 and 11, ground 11. The ground 11 breach of contract stated was non payment of rent. The notice is addressed to the tenant but appears to have been emailed on 15.8.2022 to a Zara Millar, who is described in the application as the tenant's sister. No further documents were provided.

3. On 1.11.2023 the FTT wrote to the Applicant's agent as follows: Please provide a copy of the tenancy agreement . Further queries may be raised upon receipt and perusal of that document. You have not lodged a copy of the notice which is required to be given to the local authority under section 11(3) of the Homelessness etc. (Scotland) Act 2003 nor have you provided any evidence of the method and date on which that was given to the local authority as required under section 56 (1) of the Private Housing (Tenancies) (Scotland) Act 2016. Please do so now. Please note the terms of the attached letter relating to the potential impact on your application of the Cost of Living (Tenant Protection) (Scotland) Act 2022 The copy Notice to Leave(NTL) which you have submitted does not appear to follow the prescribed terms contained in The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017. Can you consider the terms of those regulations and also the terms of the Private Housing (Tenancies) (Scotland) Act 2016 (and particularly sections 54(2), 62(4) and 62(5) of that Act) and confirm whether the NTL meets the requirements of the legislation with particular regard to both the required period of notice to be given and the effective date to be inserted into a NTL and whether it should be regarded as valid. You have provided no evidence of the method of service of this notices nor any proof of delivery of it to the tenant. Please do so now. The copy NTL also bears to be dated 15 August 2022. Please explain why you think that notice can be used as the foundation for a valid application to the tribunal given the terms of section 55 of the Private Housing (Tenancies) (Scotland) Act 2016 In terms of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017, Rule 109, it is a requirement that an application for eviction is accompanied by evidence showing that the eviction ground has been met. The relevant provisions of the Private Housing (Tenancies) (Scotland) Act 2016 set out the types of evidence which might tend to show that the landlord has that intention. In your application you state that you wish to seek an eviction order based on a number of grounds . You have provided no evidence to support any of them. 2 Can you please provide appropriate evidence supporting each of the grounds upon which you seek to rely as set out in the relevant schedule to the 2016 Act. Upon receipt of the above information, a final decision can then be taken on whether the application is valid and whether it should be accepted and referred to the tribunal for full determination. We would strongly advise you to obtain independent legal advice on the matters contained in this letter. The tribunal cannot

assist you in providing advice on these matters. The tribunal is an independent judicial body and requires to be impartial. It is a matter for you to seek advice on what you wish to include in your applications. Please reply to this office with the necessary information by 15 November 2023. If we do not hear from you within this time, the President may decide to reject the application.

4. No further reply was received.
5. The file documents are referred to for their terms and held to be incorporated herein.

DECISION

6. I considered the application in terms of Rule 8 of the Procedural Rules. That Rule provides:-

"Rejection of application

8.—(1) The Chamber President or another member of the First-tier Tribunal under the delegated powers of the Chamber President, must reject an application if –

(a) they consider that the application is frivolous or vexatious;

(b) the dispute to which the application relates has been resolved;

(c) they have good reason to believe that it would not be appropriate to accept the application;

(d) they consider that the application is being made for a purpose other than a purpose specified in the application; or

(e) the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined.

(2) Where the Chamber President, or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, makes a decision under paragraph (1) to reject an application the First-tier Tribunal must notify the applicant and the notification must state the reason for the decision."

7. **After consideration of the application, the attachments and correspondence from the Applicant, I consider that the application should be rejected in terms of Rule 8 (c) of the Rules of Procedure on the basis as the Tribunal has good reason to believe that it would not be appropriate to accept the application.**

REASONS FOR DECISION

1. The documents required in terms of rule 109 (b) i, ii and iii were not provided, despite the FTT having requested these.
2. The Applicant has not provided any evidence that any ground has been met. No rent statement, evidence of antisocial behaviour or steps taken regarding a potential sale of the property have been submitted. It is also noted that the notice referred to ground 11 as a breach of the tenancy agreement through non payment of rent although the ground explicitly states that “the reference in sub-paragraph (2) to a term of the tenancy does not include the term under which the tenant is required to pay rent.”
3. The Applicant has provided a document described as Notice to Leave. The Tribunal considers that what is required in terms of rule 109 (b) ii is a valid Notice to Leave as defined in S 62 of the Act. S 62 (1) (d) requires the notice to fulfil any other requirements prescribed by Scottish Ministers. The Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 as amended set out the format and information necessary for a Notice to Leave. The notices sent by the Applicant are not on the prescribed format and do not give the information stated in the statutory form regarding advice and notice periods and does not provide the statutory information required in part 4 of a Notice to Leave.
4. Quite apart from the question of whether the Notice may be a valid notice, due to its date it is not a document that can be used to make an application before the FTT. In terms of s 55 of the Private Housing (Tenancies) (Scotland) Act 2016 “(1) a landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave more than six months after the day on which the relevant period in relation to that notice expired.” The notice states as the relevant date 11.9.2022, the application was not made until 9.10.2023 and thus more than six months after the relevant expiry date stated on the notice.
5. As one ground stated on the notice was ground 1 a notice period of 84 days would have applied. The notice also did not give the required notice period in terms of s 54 of the Act.
6. The notice was not sent to the Respondent.
7. S 56 of the Act specifies that a landlord may not make an application to the FTT for an eviction order against a tenant unless the landlord has given notice of the landlord’s intention to do so to the local authority in whose area the let property is situated and S 56 (2) provides that this notice is to be given in the manner and form under section 11 (3) of the Homelessness etc (Scotland) Act 2003. Rule 109 (b) iii requires this form to be lodged

with the application. Whilst the Applicant has provided a copy of the notice document dated 15.8.2022 to the local authority, this is not a valid s 11 notice and does not provide such information as required e.g. the start date of the tenancy and the landlord details as required in terms of the Notices to Local Authorities (Scotland) Regulations 2008 as amended and S 11 (3) of the Homelessness etc. (Scotland) Act 2003. Thus the lodging requirement of rule 109 (b) iii is not met.

8. Because the requirements for lodging a valid application in terms of rule 109 are not met, it would not be appropriate for the Tribunal to accept the application, which essentially remains incomplete.
9. The application is accordingly rejected.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision:-

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them. Information about the appeal procedure can be forwarded to you on request.

Petra Hennig McFatridge

Legal Member

11 December 2023